

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Noemi Martin	Team: Team # 5	CCRB Case #: 200913888	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 09/03/2009 2:50 AM	Location of Incident: 1431 St. Nicholas Avenue	Precinct: 34	18 Mo. SOL 3/3/2011	EO SOL 3/3/2011	
Date/Time CV Reported Thu, 09/03/2009 11:15 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 09/08/2009 2:32 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Fabio Nunez	01432	925839	QUARTERMASTER
2. POM Andrew Roe	27905	931080	034 PCT
3. SGT Daniel Schwarz	03747	916662	034 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Cleavens Duchatelier	02279	933761	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Daniel Schwarz	Abuse: Sgt. Daniel Schwarz supervised the stop of § 87(2)(b)	
B.POM Andrew Roe	Force: PO Andrew Roe used physical force against § 87(2)(b)	
C.POM Fabio Nunez	Force: PO Fabio Nunez used physical force against § 87(2)(b)	
D.POM Andrew Roe	Force: PO Andrew Roe struck § 87(2)(b) with a gun.	
E.POM Fabio Nunez	Force: PO Fabio Nunez struck § 87(2)(b) with a radio.	
F.POM Andrew Roe	Discourtesy: PO Andrew Roe spoke obscenely and/or rudely to § 87(2)(b)	
G.POM Fabio Nunez	Discourtesy: PO Fabio Nunez spoke obscenely and/or rudely to § 87(2)(b)	
H.POM Andrew Roe	Force: PO Andrew Roe used physical force against § 87(2)(b)	
I.POM Andrew Roe	Off. Language: PO Andrew Roe made remarks to § 87(2)(b) based upon race.	

### Case Summary

On September 3, 2009, § 87(2)(b) filed this complaint with IAB, where it received Log Number 09-43447 (encl. 8A-8B). On September 8, 2009, IAB referred this complaint to the CCRB (encl. 10A-10B). § 87(2)(b) was initially uncooperative with the investigation and on September 30, 2009, the case was submitted for closure. On November 9, 2009, § 87(2)(b) appeared at the CCRB and provided a sworn statement (encl. 11A-11I).

On September 3, 2009, at approximately 2:50 a.m., in front of 1431 St. Nicholas Avenue in Manhattan, § 87(2)(b) was forcibly stopped by PO Fabio Nunez, PO Andrew Roe, PO Cleavens Duchatelier and Sgt. Daniel Schwarz of the 34<sup>th</sup> Precinct for § 87(2)(a) 160.50. § 87(2)(b) was ultimately arrested for this and § 87(2)(a) 160.50. The following allegations resulted from the officers' actions:

- **Allegation A - Abuse of Authority:** Sgt. Daniel Schwarz supervised the stop of § 87(2)(b) § 87(2)(g).
- **Allegation B – Force:** PO Andrew Roe used physical force against § 87(2)(b) § 87(2)(g).
- **Allegation C – Force:** PO Fabio Nunez used physical force against § 87(2)(b) § 87(2)(g).
- **Allegation D – Force:** PO Andrew Roe struck § 87(2)(b) with a gun. § 87(2)(g).
- **Allegation E – Force:** PO Fabio Nunez struck § 87(2)(b) with a radio. § 87(2)(g).
- **Allegation F – Discourtesy:** PO Andrew Roe spoke obscenely and/or rudely to § 87(2)(b) § 87(2)(g).
- **Allegation G – Discourtesy:** PO Fabio Nunez spoke obscenely and/or rudely to § 87(2)(b) § 87(2)(g).
- **Allegation H – Force:** PO Andrew Roe used physical force against § 87(2)(b) § 87(2)(g).
- **Allegation I – Offensive Language:** PO Andrew Roe made remarks to § 87(2)(b) based upon race. § 87(2)(g).

## Results of Investigation

### Civilian Statement

#### Complainant/Victim: § 87(2)(b)

- § 87(2)(b) a § 87(2)(b) *Hispanic male, is 6'1" tall and weighs 190 lbs.* § 87(2)(b)

#### CCRB Testimony:

On September 3, 2009, at approximately 2:50 a.m., § 87(2)(b) exited the #1 train station located on West 181<sup>st</sup> Street and St. Nicholas Avenue in Manhattan. § 87(2)(b) was alone and planned to take the bus to visit a friend, § 87(2)(b) who lives in the Bronx. § 87(2)(b) was wearing a black t-shirt, a black baseball cap and blue jeans and denied that he was carrying anything. As he walked along West 181<sup>st</sup> Street, § 87(2)(b) stopped at a Chase Bank, which was across the street from the train station and near the bus stop. § 87(2)(b) noticed two male strangers standing around, but did not say anything to them. § 87(2)(b) did not make it to the ATM, because all of a sudden, he noticed a white male running towards him. § 87(2)(b) became frightened, thinking he was going to be mugged and ran down the street, in the direction of the bus stop. The male yelled that he was a police officer and ordered him to stop. § 87(2)(b) however, did not stop and continued running. § 87(2)(b) described the officer as a white male, approximately 6' tall, approximately 300-350 lbs, stocky build, in plainclothes, wearing a NY Yankees cap. This investigation identified this officer as PO Andrew Roe.

PO Roe caught up to § 87(2)(b) and pushed his head into a wall with his body. When asked to clarify, § 87(2)(b) became hostile to the undersigned investigator, reiterating that PO Roe used his entire body to push him into the wall. § 87(2)(b) explained that the wall was across the street from the bus stop, but could not elaborate any further. At this time, § 87(2)(b) lost consciousness. However, moments later in the interview, § 87(2)(b) clarified that he was semi-conscious. After being pushed, § 87(2)(b) felt two officers hit him with guns on the either side of his head. Later in the interview, § 87(2)(b) clarified that PO Roe hit him on the left side of the face with the butt of the gun and believes a second officer hit him in the right hand side, on his ear with a walkie-talkie. § 87(2)(b) described the second officer as a Hispanic male, approximately 5'6" tall, and a stocky build. This investigation identified this officer as PO Fabio Nunez. PO Nunez then kicked § 87(2)(b) in the face, in the leg, and on his back. § 87(2)(b) also felt someone stand on his back, but could not say who this was. During this time, the two officers were repeatedly yelling, "fuck this, fuck that, and fuck you." When asked to state the exact context, § 87(2)(b) could not recall.

§ 87(2)(b) was then handcuffed, picked up and walked to the police vehicle. Along the way to the car, PO Roe kicked § 87(2)(b) in the knees and he fell on the ground. While he was on his knees, PO Roe searched him and removed his keys, cell phone, ID from his pants pockets and said, "You fucking spic, you are thirty years old and running in the fucking streets." He was then picked up and escorted to the black Crown Victoria police vehicle. § 87(2)(b) did not recall the specifics of what happened next, because he lost consciousness. When § 87(2)(b) came to, he was inside a jail cell at the 34<sup>th</sup> Precinct stationhouse. Someone in the cell told him he was bleeding and § 87(2)(b) spit up some blood. The prisoners in the cell asked § 87(2)(b) what happened and he told them that he was beaten up by the police. As § 87(2)(b) was explaining what happened, he overheard PO Nunez laughing and saying, "Damn, I beat that guy up really bad, and I think I hurt my foot." § 87(2)(b) then requested medical attention and EMS came to the stationhouse. § 87(2)(b) was later taken to § 87(2)(b) by two unidentified officers and EMS.

At the hospital, § 87(2)(b) believed that they may have injected something to drug him, because he became drowsy. He was later diagnosed with head injury and given Tylenol. After

his release, he was taken to Manhattan Central Booking, where he reported that he was beaten up by two officers and was arraigned. § 87(2)(b) denied being under the influence of alcohol or drugs on the night of the incident.

On September 4, 2009, § 87(2)(b) took photographs of his injuries, which he provided to the CCRB (encl. 11F-11I). He also went to the incident location and found the two men who were present for the incident and provided the CCRB with their contact information.

### **Attempts to Contact Civilians**

- § 87(2)(b) provided the names and telephone numbers of § 87(2)(b) and a male only known as § 87(2)(b). On January 11, 2010, contact was made with § 87(2)(b) who did not recall this incident. § 87(2)(b) acknowledged that he was a friend, only known as § 87(2)(b) but stated that his cell phone was disconnected. On January 15, 2010, a call to § 87(2)(b)'s phone confirmed that the number was not in service.

### **NYPD Statements:**

#### **Subject Officer: PO FABIO NUNEZ**

- *PO Nunez, a § 87(2)(b)-old Hispanic male, is 5'11" tall, weighs 220 pounds, and has black hair and brown eyes.*
- *On March 1, 2010, PO Nunez worked from 6:00 p.m. to 2:00 a.m., assigned to the anti-crime team with PO Andrew Roe and Sgt. Schwarz. The officers were in plainclothes, in an unmarked vehicle and he was the operator.*

#### **Memo Book**

PO Nunez did not have his memo book because it was confiscated by IAB for investigation.

#### **CCRB Testimony**

On March 25, 2010, PO Fabio Nunez, shield # 1432, currently assigned to the Quartermaster command, was interviewed at the CCRB (encl.15A-15B). On September 3, 2009, at approximately 2:50 a.m., PO Nunez, PO Roe, and Sgt. Schwarz were driving around St. Nicholas Avenue, looking for suspicious activity as part of their assignment. There was a second anti-crime vehicle with two additional officers, but PO Nunez did not recall who they were. As they were patrolling, PO Nunez noticed that between West 181<sup>st</sup> Street and West 184<sup>th</sup> Street, the storefront gates were clean and freshly painted. This area had undergone a recent makeover by a community group who targeted graffiti. The group volunteered their time and painted over the gates of several storefronts. On West 182<sup>nd</sup> Street, to the right hand side, PO Nunez saw a male, later identified as § 87(2)(b) writing graffiti on a store gate, which was next to Chase bank. § 87(2)(b) was "tagging" on the wall, but PO Nunez did not recall the sign/name. PO Nunez took photographs of the graffiti for court purposes, but did not have them at the time of the interview. The officers parked the car in the middle of West 181<sup>st</sup> Street and exited the vehicle to investigate. As PO Nunez and PO Roe walked towards § 87(2)(b) one of their radios must have gone off, because § 87(2)(b) immediately looked up and ran. § 87(2)(b) ran towards West 181<sup>st</sup> Street and dropped the can of paint. The officers yelled, "Stop," numerous times but § 87(2)(b) continued running.

Both officers chased him, but PO Roe was a little ahead of PO Nunez. Both officers caught up to § 87(2)(b) by West 178<sup>th</sup> Street and Audubon Avenue and tackled him to the ground. PO Nunez clarified that after the officers jumped on § 87(2)(b) he hit the gate first and then landed on the ground. PO Nunez speculated he might have grabbed him by the shoulder, but could not recall. § 87(2)(b) face hit the ground. Later at the stationhouse, PO Nunez saw that § 87(2)(b) had sustained cuts and scratches to his face and attributed those injuries to when he fell. PO Nunez could not recall which side of his face he sustained the injuries. PO Nunez also hurt his

left ankle when he tackled § 87(2)(b) to the ground and did not recall if PO Roe also sustained any injuries. PO Nunez believed that Sgt. Schwarz and the other officers were present, but did not recall their involvement. Once on the ground, § 87(2)(b) continued to resist by moving around, while the officers instructed him to give up his hands. PO Nunez did not recall whether he or PO Roe handcuffed § 87(2)(b) but remembered that they both forced § 87(2)(b) hands behind his back. PO Nunez denied that § 87(2)(b) lost consciousness during this time. PO Nunez picked § 87(2)(b) up from the ground by his arms and escorted him to the police vehicle. PO Nunez denied that he or any other officer used the butt of the gun or the radio to hit § 87(2)(b) he also denied that he or any other officer kicked § 87(2)(b) PO Nunez added that § 87(2)(b) never lost consciousness during the entire time he was with him.

PO Nunez speculated that § 87(2)(b) was under the influence of some drug, because his eyes were dilated. He did not demonstrate any other sign of intoxication. § 87(2)(b) was transported to the 34<sup>th</sup> Precinct stationhouse for arrest processing. The entire anti-crime team returned to the stationhouse. PO Nunez denied that he or another officer ever used discourteous language or offensive language in speaking with § 87(2)(b) PO Nunez went end of tour after he completed the arrest paperwork. He did not recall if EMS was ever called to treat § 87(2)(b)

**Subject Officer: PO ANDREW ROE**

- PO Roe, a § 87(2)(b)-old white male, is 6' tall, weighs 210 pounds, and has blonde hair and blue eyes.
- On September 2, 2009, PO Roe worked anti-crime from 8:30 p.m. to 3:05 a.m. on September 3, 2009 with Sgt. Schwarz, PO Nunez, and PO Duchatelier.

**Memo Book**

At 2:45 a.m., PO Roe noted a pick up job for a graffiti incident in front of 1431 St. Nicholas Avenue. A foot pursuit ensued, and at 2:50 a.m., § 87(2)(b) was under arrest by PO Nunez (encl. 16A-16B).

**CCRB Testimony:**

On April 27, 2010, PO Andrew Roe was interviewed at the CCRB (encl. 15A-15B). § 87(2)(g)

When the team first observed § 87(2)(b) PO Roe decided to stop him. The officers pulled over and PO Roe exited the vehicle first. He believed that PO Nunez was behind him and did not know if Sgt. Schwarz and PO Duchatelier joined them. PO Roe walked towards § 87(2)(b) and as he got within 15 feet of him, PO Roe displayed his shield around his neck. § 87(2)(b) turned and made eye contact with PO Roe. § 87(2)(b) immediately took off and ran down the street. As he ran, § 87(2)(b) dropped the graffiti can into the flowerbeds near the curb. PO Roe chased § 87(2)(b) and was not sure if the other officers were behind him. PO Roe chased him for a block and a half and repeatedly yelled at him to stop. § 87(2)(b) looked back a few times and continued running. PO Roe caught up to § 87(2)(b) on the corner of Wadsworth Avenue and St. Nicholas Avenue and grabbed his upper torso and back with both of his hands. PO Roe placed him against a wall and attempted to handcuff him.

At this time, PO Roe was joined by PO Nunez, Sgt. Schwarz and PO Duchatelier. PO Roe did not recall § 87(2)(b) saying anything, but he was physically resisting by not giving up his hands. PO Roe did not recall if the other officers assisted him with handcuffing § 87(2)(b) PO Roe denied using any force other than grabbing § 87(2)(b) to get his hands behind his back, and he denied that another officer used force against § 87(2)(b) After a minute of struggle, PO Roe was able to get § 87(2)(b) on the ground by using an arm bar (place one hand against § 87(2)(b) elbow) and tripping him. § 87(2)(b) landed face down on his stomach. PO Roe denied that he saw any visible bruises or injuries on § 87(2)(b) and denied that he complained of any injuries. PO Roe denied that he or another officer used profanities in speaking with § 87(2)(b)

PO Roe was on top of him, while another officer-either PO Nunez or PO Duchatelier-was trying to get a hold of one arm, but § 87(2)(b) continued to resist. PO Roe denied that he or another officer kicked or punched § 87(2)(b) or that a radio or the butt of a gun was used.

Once § 87(2)(b) was handcuffed, he was picked up by PO Roe and walked to the police vehicle. PO Roe denied that § 87(2)(b) resisted in walking to the vehicle and no force was used during transport. PO Roe denied that § 87(2)(b) ever lost consciousness. Photos of § 87(2)(b) injuries were shown to PO Roe, but he denied that he ever witnessed them and did not know how they were sustained. He did not recall EMS being called. PO Roe denied that he or another officer used the alleged offensive language.

**Subject Officer: SGT. DANIEL SCHWARZ**

- *Sgt. Schwarz, a § 87(2)(b)-old Hispanic male, is 6' tall, weighs 210 pounds, and has blonde hair and brown eyes.*
- *Sgt. Schwarz had the same assignment as PO Roe and PO Nunez.*

**Memo Book:**

At 2:50 a.m., PO Nunez had one arrest at 1431 St. Nicholas Avenue regarding graffiti (encl. 20A-20B)

**CCRB Testimony:** On July 27, 2010, Sgt. Daniel Schwarz was interviewed at the CCRB (encl. 21A-21B). § 87(2)(g)

The officers exited the vehicle with their badges visible and told § 87(2)(b) to stop. § 87(2)(b) immediately dropped a black bodega bag and a can of spray paint and ran southbound on St. Nicholas Avenue. Sgt. Schwarz ran a few steps to recover the dropped items, while the other three officers chased § 87(2)(b). § 87(2)(b) then made a left on the corner of West 181<sup>st</sup> Street and St. Nicholas Avenue, out of Sgt. Schwarz' sight. Sgt. Schwarz took the items to the vehicle which was still running and drove southbound, pulling over on the corner of West 181<sup>st</sup> Street and St. Nicholas Avenue. Sgt. Schwarz picked up a police asp and a radio that had fallen from one of the officers as they were chasing § 87(2)(b). Sgt. Schwarz was unsure who each item belonged to, but recalled that they belonged to two different officers.

Sgt. Schwarz got back inside his vehicle and drove around the corner of West 181<sup>st</sup> Street and St. Nicholas Avenue. When Sgt. Schwarz arrived, he looked to the left and saw that the three officers had § 87(2)(b) handcuffed and were walking him to the car. Sgt. Schwarz did not see § 87(2)(b) being apprehended and did not see § 87(2)(b) resist in any way or say anything. Sgt. Schwarz did not recall observing any physical injuries on § 87(2)(b) or observed the officers use any force against him. Sgt. Schwarz could not recall if § 87(2)(b) ever lost consciousness or if the other officers mentioned him losing consciousness. Sgt. Schwarz never overheard another officer direct profanity or offensive language towards § 87(2)(b).

**Witness Officer: PO CLEAVENS DUCHATELIER**

- *PO Duchatelier, a § 87(2)(b)-old black male, is 5'10" tall, weighs 180 pounds and has a shaven bald head and brown eyes.*
- *On September 3, 2009, PO Duchatelier had the same assignment as PO Roe, PO Nunez, and Sgt. Schwarz.*

**Memo Book:**

At 2:45 a.m., PO Duchatelier noted that there was a male stopped. At 2:50 a.m., the male, now identified as § 87(2)(b) was arrested (encl. 18A-18B).

**CCRB Testimony:**

On July 6, 2010, PO Cleavens Duchatelier was interviewed at the CCRB (encl. 19A-19B).

§ 87(2)(g)

PO Duchatelier who was seated in the rear passenger's side personally observed § 87(2)(b) spraying the gate. PO Roe and PO Duchatelier exited the vehicle and pulled their shields out of their sweaters. PO Duchatelier yelled at § 87(2)(b) to stop. § 87(2)(b) turned around, made eye contact with the officers and ran off. § 87(2)(b) ran with the bottle of spray paint, which he later discarded. PO Roe and PO Duchatelier ran after him, with PO Roe leading the way. The officers were yelling "Stop," but § 87(2)(b) did not and continued to look back. PO Roe was able to catch up to him a block and a half away. PO Duchatelier observed PO Roe grab § 87(2)(b) similar to a bear hug from behind and take him down to the ground so that he landed on his stomach.

Once he was on the ground, PO Duchatelier caught up to them and tried to grab § 87(2)(b) arms. § 87(2)(b) was physically resisting by keeping his hands tucked inside his chest. The officers repeatedly instructed § 87(2)(b) to stop resisting, but he did not comply. After about a minute or so, the officers were able to grab his arms and pull them out. PO Roe handcuffed § 87(2)(b). By this time, Sgt. Schwarz and PO Nunez made it over and joined them. Neither of them were physically involved with § 87(2)(b). The officers picked up § 87(2)(b) and walked him to the police vehicle. PO Duchatelier denied that he or another officer used additional force that what was described above. PO Duchatelier denied that he or another officer used profanities or offensive language towards § 87(2)(b). PO Duchatelier denied witnessing any injuries on § 87(2)(b) and denied that he ever lost consciousness.

### **Medical Records**

- The ambulance call report for § 87(2)(b) (encl. 25A-25B) stated that on § 87(2)(b) EMS responded to the 34<sup>th</sup> Precinct stationhouse, located at 4295 Broadway in Manhattan. § 87(2)(b) was seen inside of the holding cell, where he complained of pain to his head and mouth. NYPD reported to the EMTs that § 87(2)(b) ran from them and he was tackled to the ground. § 87(2)(b) had swelling to upper lip, a small hematoma to the back of the head, and pain to his back. His chief complaint was "my lip hurts." § 87(2)(b) was transported to § 87(2)(b) by EMS and PO Wilson Lema, shield # 27469 of the 34<sup>th</sup> Precinct.
- The medical records from § 87(2)(b) (encl. 26A-26R) confirmed that § 87(2)(b) complained of multiple injuries after being assaulted by police. § 87(2)(b) was noted to have several contusions to face, head and neck. He was prescribed 600 mg. of Ibuprofen for pain as needed.
- The Medical Treatment of Prisoner form (encl. 27) corroborated that § 87(2)(b) complained of mouth and back pain. His final diagnosis was contusions to face and scalp.

### **NYPD Documents**

#### ***IAB Intake CD***

§ 87(2)(g)

#### ***34<sup>th</sup> Precinct Command Log***

The command log (encl. 22) lists § 87(2)(b) arrest entry at 2:50 a.m. by PO Nunez. § 87(2)(b) physical and mental condition was listed as apparently normal. § 87(2)(b) was

removed to § 87(2)(b) at § 87(2)(b) and returned to the stationhouse at § 87(2)(b). At 8:05 a.m., § 87(2)(b) was transported to Manhattan Central Booking.

### *Prisoner Holding Pen Roster*

§ 87(2)(g)

## 34<sup>th</sup> Precinct Roll Call

The roll call for September 3, 2009, tour 1 (encl. 24) confirms the officers' assignments.

## Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

## Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of August 9, 2010 with regard to the incident.

**[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]**

- [illegible]



- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)]  
[§ 87(2)(b)]
- [§ 87(2)(b)]  
[§ 87(2)(b)]
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[§ 87(2)(b)]
- [§ 87(2)(b)]  
[§ 87(2)(b)]

### **Civilian CCRB History**

- This is the first CCRB complaint filed by [§ 87(2)(b)] (encl. 6).

### **Subject Officers CCRB History**

- Sgt. Schwarz has been a member of service for the past 15 years and there are no substantiated CCRB allegations against him (encl. 3).
- PO Roe has been a member of service for the past 8 years and there are no substantiated CCRB allegations against him (encl. 4).
- PO Nunez has been a member of service for the past 10 years and there is 1 substantiated CCRB allegation against him (encl. 5A-5B):
  - In CCRB # 200504839, PO Nunez was found guilty of an improper vehicle search. He was issued instructions by the NYPD.

## **Conclusion**

### **Identification of Subject Officers**

- Sgt. Schwarz, PO Nunez, and PO Roe acknowledged their respective interactions with [§ 87(2)(b)]  
[§ 87(2)(b)]
- [§ 87(2)(g)]  
[§ 87(2)(g)]

### **Allegation Not Pleaded**

- [§ 87(2)(b)] alleged that after he was handcuffed, PO Roe searched him and removed his keys, cell phone, ID from his pants pockets. [§ 87(2)(g)]  
[§ 87(2)(g)]

### **Investigative Findings and Recommendations**

#### **Allegation A - Abuse of Authority: Sgt. Daniel Schwarz supervised the stop of [§ 87(2)(b)]**

It is undisputed that on September 3, 2009, at approximately 2:50 a.m., [§ 87(2)(b)] was forcibly stopped by the NYPD. [§ 87(2)(g)] [§ 87(2)(b)] [§ 87(2)(b)] alleged that while on his way to the ATM, a white male, later identified as PO Roe started running towards him. [§ 87(2)(b)] ran down the block for fear of being mugged. PO Roe testified that [§ 87(2)(b)] was observed spray painting a storefront gate when he decided to stop him. Upon approach, [§ 87(2)(b)] immediately fled, dropping the can of spray paint, which was later vouchered. All of the officers interviewed provided consistent testimonies that while they were patrolling the area, they all observed [§ 87(2)(b)] committing a crime.

NYPD Patrol Guide 212-11 (encl. 1A-1C), regarding stop and frisk, states that “an officer can temporarily detain a person for questioning to conduct a criminal investigation when they reasonably suspect the person has committed, is committing or is about to commit a felony or a penal law misdemeanor.” § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation B – Force: PO Andrew Roe used physical force against § 87(2)(b)**

**Allegation C – Force: PO Fabio Nunez used physical force against § 87(2)(b)**

NYPD Patrol Guidelines 203-11 (encl. 2A-2B) states that officers can use only that amount of force necessary to overcome resistance to effect an arrest. All the officers testified that § 87(2)(b) was observed committing an arrestable offense. Upon approach, § 87(2)(b) fled from them causing them to chase him. § 87(2)(b) admitted that he ran from the officer § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation D – Force: PO Andrew Roe struck § 87(2)(b) with a gun.**

**Allegation E – Force: PO Fabio Nunez struck § 87(2)(b) with a radio.**

**Allegation F – Discourtesy: PO Andrew Roe spoke obscenely and/or rudely to § 87(2)(b)**

§ 87(2)(b)

**Allegation G – Discourtesy: PO Fabio Nunez spoke obscenely and/or rudely to § 87(2)(b)**

§ 87(2)(b)

**Allegation H – Force: PO Andrew Roe used physical force against § 87(2)(b)**

**Allegation I – Offensive Language: PO Andrew Roe made remarks to § 87(2)(b) based upon race.**

§ 87(2)(b) alleged that after he was apprehended, he lost consciousness. However, § 87(2)(b) later clarified that he was semi-conscious when he felt two officers hit him with guns on the either side of his head. § 87(2)(b) later revised his statement and clarified that PO Roe hit him on the left side of the face with the butt of the gun and PO Nunez hit him on the right side on his ear with a walkie-talkie. He added that PO Nunez kicked him in the face, in the leg, and on his back. During this time, PO Nunez and PO Roe repeatedly cursed at him. Finally, upon being escorted to the police vehicle, PO Roe kicked him in the leg and made an offensive remark. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Team: 5

Investigator: _____	Noemi Báez	September 8, 2010
Signature	Print	Date

Supervisor: _____	_____	_____
Title/Signature	Print	Date

Reviewer: _____	_____	_____
Title/Signature	Print	Date

Reviewer: _____	_____	_____
Title/Signature	Print	Date